



Appeal Decision

Site visit made on 6 August 2019

by Rajeevan Satheesan BSc PGCert MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th August 2019

Appeal Ref: APP/W3520/W/19/3226743

Land to the North of Langton Green, Langton Green, Eye IP23 7HL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by B&M Pension Scheme against the decision of Mid Suffolk District Council.
 - The application Ref DC/18/05336, dated 4 December 2018, was refused by notice dated 5 March 2019.
 - The development proposed is for the erection of 9 dwellings.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The original application was made in outline with all matters reserved. I have had regard to the location plan (Drawing No 1 Revision 1), proposed site plan (Drawing No 4 Revision 1) and Site Access Visibility Splays (Drawing No 5) but have regarded all elements of these drawings as indicative only.
3. Reference has been made by the appellant and third parties to the emerging Babergh and Mid Suffolk Joint Local Plan 2014-2036 and the emerging Eye Neighbourhood Plan. However, neither the emerging joint Local Plan nor the Neighbourhood Plan have reached a sufficiently advanced stage in their production for me to attach sufficient weight to them for the purposes of the determination of this appeal. I shall therefore make no further reference to either of the emerging plans.
4. The site visit procedure was altered from an access required site visit to an unaccompanied site visit as the appellant's representative was not present when I arrived at the site during the pre-arranged period and it was possible to see all that was required from the road and the private access drive adjacent to the site.
5. Subsequent to the determination of the application and prior to my site visit, the appellant has submitted a draft unilateral undertaking (UU) to secure the provision of affordable housing (AH). I consider this draft UU in relation to the Regulatory tests of the Community Infrastructure Levy (CIL) and whether the Council could rely on it to secure the AH below.

Main Issues

6. The main issues are:

- The effect of the proposal on the character and appearance of the area;
- whether the proposed development would provide a suitable location for housing, having regard to the accessibility of services and facilities; and
- whether the proposal makes adequate provision for affordable housing.

Reasons

Character and appearance

7. The site is an area of open undeveloped grazing land, surrounded by mature hedgerow and trees facing the highway and the private drive.
8. My attention has been drawn to a recent appeal decision for this site¹ which was dismissed. In that case, the Inspector considered that “the site is largely surrounded by agricultural land and, whilst some limited development does exist, the appeal site side of the road is predominantly rural and distinctly different in character to that opposite, which is more extensively developed As a result, whilst the appeal site is in relatively close proximity to other development, the site can clearly be perceived as forming part of the open countryside”. I agree with the previous Inspector’s findings, with regards to the site forming part of the open countryside.
9. Whilst the appellant contends that the existing mature hedgerow surrounding the site would limit views into and out of the site and reduces the impact the proposal has on the surrounding landscape, I agree with the previous Inspector that, whilst these hedges may reduce the visual impact of development on the site, they are natural features and, as such, would not provide permanent screening during the autumn/winter months of the year.
10. Although the scale of the built form has been reduced since the previous scheme, the construction of nine dwellings, regardless of scale, appearance, layout and landscaping would be visible over the remaining hedgerow and would reduce the largely open and undeveloped qualities of this side of the Road. As a consequence, the proposal would materially detract from its predominantly rural landscape setting, and harm to the character and appearance of the area. Whilst the submitted drawings are indicative only, no evidence has been submitted which allows me to consider an alternative layout would satisfactorily overcome the harm identified.
11. The proposal would therefore harm the character and appearance of the area, contrary to saved Policies H7 and H15 of the Mid Suffolk Local Plan, 1998 (LP), and Policy CS5 of the Core Strategy Development Plan Document, 2008 (CS). Amongst other things these seek to protect local character and landscape qualities of the area and retain the local distinctiveness of the area. Whilst these policies are of some age, they generally accord with the Framework and therefore I attach significant weight to them.
12. It would also not meet the aims of paragraphs 127(c) and 170 of the National Planning Policy Framework (Framework), which amongst other things, seeks to ensure that development is sympathetic to the local character and history,

¹ Appeal ref: APP/W3520/W/18/3217559 for the erection of 20 new dwellings with garages and internal access road on land adjacent to the settlement boundary of Eye.

including the surrounding built environment and landscape setting, and recognise the intrinsic character and beauty of the countryside.

13. Reference has also been made to Saved Policies GP1 and CL2 of the LP. However, as these refer to the layout and design of new developments, and special landscape areas, I do not consider that these policies are relevant to this outline proposal.

Suitability of the location

14. The site is situated outside of the settlement boundary of Eye in the LP, and as such, it is located within the countryside. The previous Inspector found that the site would not be isolated and would be within reasonable proximity of Eye. Thus, there would be no conflict with paragraph 79 of the Framework. However, owing to the characteristics of the local highway network (with no footway and street lighting adjacent to the site, and the distance away to the nearest bus stop), the Inspector considered that insufficient evidence was provided to demonstrate that a safe and suitable access to the site could be achieved for all users or occupiers of the proposed development, particularly pedestrians and including children. Consequently, it is highly likely that future occupiers would be heavily reliant on the private car to access services and facilities.
15. In an attempt to improve connectivity and highway safety to this site, the appellant contends that a footway could be installed outside of the site to connect to the settlement of Eye. An email has been submitted from Suffolk County Council Highways Authority, which confirms that the grass verge between Langton Grove and the entrance on the opposite side of the B1077 is within its ownership. Furthermore, Ardent Consulting Engineers consider that a suitable footway and crossing could be provided in this location, and the appellant considers that this could be satisfactorily dealt with by condition. However, such highway works would require a submission of a planning obligation (Planning agreement or UU) to either secure payment so that the Council could carry out the works, or for the developer to carry the works out themselves under an agreement under Section 278 of the Highways Act 1980. In the absence of a satisfactory planning obligation for the highways works, there is no certainty that the works would be delivered. Therefore, I do not consider that such an essential matter can be dealt with by condition.
16. Consequently, the proposed development would not provide a suitable location for housing having regard to the accessibility of services and facilities. Therefore, it would not accord with the Saved Policy T10 of the LP, and Policies FC1, FC1.1 of the Mid Suffolk Core Strategy Focused Review 2012 (CSFR). Amongst other things, these require safe access to and from the site, and require development proposals to demonstrate the principles of sustainable development. These policies generally accord with the Framework and therefore I attach significant weight to them. The development would also not accord with paragraph 108 of the Framework which seeks to ensure that safe and suitable access to the site can be achieved for all users.
17. Reference has also been made to Policy FC2 of the CSFR which concerns the distribution of housing. However, there little evidence before me to demonstrate that the proposal would conflict with this proposal. Therefore, I find no conflict with this policy. The reason for refusal also refers to Policy T9 of the LP, which concerns parking provision. However, given that the outline

nature of the proposal with all matters reserved, I also find no conflict with this policy.

Affordable Housing

18. The Mid Suffolk Local Plan First Alteration 2006 (ALP) Policy H4(altered) requires the provision of up to 35% AH for new developments, taking into account identified local needs, viability and the availability of local services. The proposed red line boundary exceeds 1.8 ha², and therefore the appellant accepts the need for affordable housing. The submitted information states that three affordable units have been agreed with the Council's Strategic Housing Team.
19. The submitted draft UU aims to secure the provision of AH. The AH proposed is necessary, related directly to the development and fairly related in scale and kind. As such it would accord with the provisions of Regulation 122 of the CIL Regulations 2010 and the tests for planning obligations set out in the Framework.
20. However, I have some concerns about the document itself, its execution and thus whether the Council could rely on it to secure the AH. For example, it is not signed by the appellant and also the indicative proposed site layout plan submitted does not specifically include the proposed house types which the Council's Strategic Housing Team are seeking to secure for AH. As such, I am not satisfied that the submitted draft UU would satisfactorily secure the AH in accordance with Policy H4(altered) of the ALP.
21. I note that the appellant considers that this could be dealt with by condition and refers to another appeal decision³ with regard to this. However, the *Planning Practice Guidance* (PPG) advises that a negatively worded condition, limiting the development that can take place until a planning obligation or other agreement has been entered into, is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency⁴.
22. Furthermore, there would be considerable intricacies involved including securing the AH in perpetuity at an appropriate rent/sale price, the approval of the size, tenure, and mix of the housing, and the phasing and transfer, if necessary, to a registered provider. Based on the evidence before me, and taking into consideration the guidance with the PPG, I am not convinced that a condition could secure such matters with the necessary precision and certainty. The development itself is neither complex nor strategically important and therefore the basic tests for considering whether to secure an obligation through a negatively worded condition would not be met. As such, a planning obligation would be necessary to secure the AH. The lack of a completed obligation is therefore fatal and is a matter that counts against the proposal.

² Taken from the appellant's statement of case.

³ Appeal ref: APP/W3520/W/18/3197538, at Cherry Tree Close, Yaxley, Suffolk, IP23 8DH

⁴ PPG ID: Paragraph: 010 Reference ID: 21a-010-20190723

23. Therefore, in the absence of any suitable mechanism for securing the AH I conclude that the proposal would not make adequate provision for affordable housing, in conflict with ALP Policy H4(altered) and the Framework, which together, seek the provision of onsite AH.

Other Matters

24. Both parties have submitted a number of other decisions in support of their case. However, I do not know the full circumstances of those cases and therefore cannot be sure that they represent a direct comparison to the appeal proposal. As such, I have dealt with the proposal before me on its merits, with regard to the previous appeal decision and in accordance with its site specific circumstances, and relevant national and local policy.

Planning Balance and Conclusions

25. There is dispute between the parties as to whether the Council is able to demonstrate a five year supply of housing land, with the appellant stating that the maximum they believe the Council can demonstrate is 4.88 years supply. I have therefore taken a precautionary approach for the purposes of determining this appeal and Paragraph 11d of the Framework and the presumption in favour of sustainable development is engaged.
26. The proposal would provide nine additional dwellings which would help meet the housing needs of the area, and I therefore attach moderate weight to this social benefit. Future occupiers of the development may also wish to contribute to the community through voluntary and other roles such as retained firefighters. I give very limited weight to this small social benefit. There would be a modest economic benefit to the area, in terms of construction jobs, and a modest increase in investment in the area following the occupation of the development.
27. However, the location of the development would conflict with the development plan policies and the Framework policies as a whole.
28. In conclusion, even if I were to accept the appellant's view that the Council is unable to demonstrate a five year housing land supply and the shortfall is as suggested by the appellant, the identified harm would significantly and demonstrably outweigh the limited benefits provided by the scheme when considered against development plan policies and the Framework when read as a whole.
29. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be dismissed.

R Satheesan

INSPECTOR